

AMENDED IN SENATE JUNE 15, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2654

Introduced by Assembly Member Hill

February 19, 2010

An act to amend Section 17533.6 of the Business and Professions Code, relating to solicitations.

LEGISLATIVE COUNSEL'S DIGEST

AB 2654, as amended, Hill. Solicitations.

Existing law makes it unlawful for any person, firm, or corporation, or association that is a nongovernmental entity to solicit funds or information by means of a mailing, electronic message, or Internet Web site that contains any term or symbol that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement, unless the nongovernmental entity has an expressed connection with a state or local entity or unless the solicitation and mailing contains a specified disclosure that it is not a governmental document. Existing law also requires a business that solicits the purchase of, or payment for, a service by means of an unsolicited mailing offering to assist the recipient in dealing with a state or local governmental agency to disclose on the envelope and in the mailing that the business is not a governmental agency and is not associated with the governmental agency rereferenced. A violation of these or other provisions related to advertising is ~~a crime~~ *misdemeanor, punishable by imprisonment in the county jail for up to 6 months, a fine of up to \$1,000, or both.*

This bill would *also make it unlawful for these solicitations to contain an emblem or other language or specified title, trade, or brand names,*

that reasonably could be interpreted or construed as implying any state or local government connection, approval, or endorsement and would require those the disclosures to be conspicuously posted on the top of the first page of the solicitation or mailing displayed apart from other print in the solicitation and on the envelope, cover, or wrapper in which the solicitation is mailed, as specified. Because a violation of this provision would be a crime, the bill would The bill would authorize a person to recover specified damages if the person is harmed from a violation of the provisions regulating the solicitation of funds or information by a nongovernmental entity. The bill would establish specified fines and criminal penalties for a violation of these provisions, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 17533.6 of the Business and Professions
- 2 Code is amended to read:
- 3 17533.6. (a) It is unlawful for any person, firm, corporation,
- 4 or association that is a nongovernmental entity to solicit
- 5 information, or to solicit the purchase of or payment for a product
- 6 or service, or to solicit the contribution of funds or membership
- 7 fees, by means of a mailing, electronic message, or Internet Web
- 8 site that contains a seal, *emblem*, insignia, trade or brand name, or
- 9 any other *language*, term, or symbol that reasonably could be
- 10 interpreted or construed as implying any state or local government
- 11 connection, approval, or endorsement, unless the requirements of
- 12 paragraph (1) or (2) have been met, as follows:
- 13 (1) The nongovernmental entity has an expressed connection
- 14 with, or the approval or endorsement of, a state or local government
- 15 entity, if permitted by other provisions of law.
- 16 (2) The solicitation meets ~~both~~ all of the following requirements:
- 17 (A) The solicitation ~~bears on its face, in conspicuous and legible~~
- 18 ~~type in contrast by typography, layout, or color with other type on~~

1 ~~its face, the following notice:~~ *conspicuously displays the following*
2 *disclosure on the front and back of every page of the solicitation:*
3 *“THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED*
4 *OR ENDORSED BY ANY GOVERNMENTAL AGENCY, AND*
5 *THIS OFFER IS NOT BEING MADE BY AN AGENCY OF*
6 *THE GOVERNMENT.”*

7 (B) In the case of a mailed solicitation, the envelope or outside
8 cover or wrapper in which the matter is mailed ~~bears on its face~~
9 ~~in capital letters and in conspicuous and legible type, the following~~
10 ~~notice:~~ *conspicuously displays the following disclosure:*
11 *“THIS IS NOT A GOVERNMENT DOCUMENT.”*

12 (C) *The disclosure in subparagraph (A) shall be displayed*
13 *conspicuously, as provided in subdivision (f), and immediately*
14 *below each portion of the solicitation that reasonably could be*
15 *construed to specify an amount due and payable by the recipient.*
16 *The disclosure in subparagraph (B) shall be displayed*
17 *conspicuously, as provided in subdivision (f), and immediately*
18 *below the area of the envelope, outside cover, or wrapper that is*
19 *used for a return address. The disclosures in subparagraphs (A)*
20 *and (B) shall not be preceded, followed, or surrounded by*
21 *language, words, symbols, terms, or other content that result in*
22 *the disclosures not being conspicuous or that introduce, modify,*
23 *qualify, or explain the text of those disclosures.*

24 (D) *The solicitation shall not use a title or trade or brand name*
25 *that reasonably could be interpreted or construed as implying any*
26 *state or local government connection, approval, or endorsement,*
27 *including, but not limited to, use of the word “agency,”*
28 *“administrative,” “assessor,” “board,” “bureau,” “collector,”*
29 *“commission,” “committee,” “department,” “division,”*
30 *“recorder,” “unit,” “state,” “county,” “city,” or “municipal,”*
31 *or the name of any government agency.*

32 (E) *The solicitation shall not state or imply that payment to any*
33 *person, firm, corporation, or association that is not a government*
34 *entity is mandatory or required by law, or state or imply that*
35 *penalties, fines, or consequences will occur if payment is not made*
36 *to the soliciting nongovernmental person, firm, corporation, or*
37 *association.*

38 (b) Except as provided in subdivision (c), any business that
39 solicits the purchase of, or payment for, a service by means of an
40 unsolicited mailing that offers to assist the recipient in dealing

1 with a state or local governmental agency ~~shall do both of the~~
2 ~~following:~~

3 (1) ~~State~~ *conspicuously state* on the envelope and in the mailing
4 that the business is not a governmental agency and is not associated
5 with the governmental agency referenced.

6 (2) ~~Include in the mailing the contact information for the~~
7 ~~governmental agency referenced.~~

8 (c) Subdivision (b) shall not apply if ~~either of the following~~
9 ~~requirements has been met:~~

10 (1) ~~The~~ *the* business has an expressed connection with, or the
11 approval or endorsement of, a state or local governmental entity,
12 if permitted by other provisions of law.

13 (2) ~~The business has an “established business relationship,” as~~
14 ~~defined in Section 1798.83 of the Civil Code, with the recipient.~~

15 (d) ~~The notice or statement required by subparagraph (A) of~~
16 ~~paragraph (2) of subdivision (a) or by paragraph (1) of subdivision~~
17 ~~(b) shall be conspicuously posted on the top of the first page of~~
18 ~~the solicitation or mailing.~~

19 (d) *Notwithstanding Section 17534, any violation of this section*
20 *is a misdemeanor punishable by imprisonment in a county jail not*
21 *exceeding six months, or by a fine not exceeding two thousand five*
22 *hundred dollars (\$2,500), or by both that fine and imprisonment.*

23 (e) *Any person who is harmed as a result of a violation of this*
24 *section shall be entitled to recover, in addition to any other*
25 *available remedies, damages in an amount equal to three times*
26 *the amount solicited.*

27 (f) *For purposes of this section, “conspicuous” or*
28 *“conspicuously” means displayed apart from other print on the*
29 *page, envelope, outside cover, or wrapper and in not less than*
30 *12-point boldface font type in capital letters that is at least 2-point*
31 *boldface font type sizes larger than the next largest print on the*
32 *page, envelope, outside cover, or wrapper and in contrasting type,*
33 *layout, font, or color in a manner that clearly calls attention to*
34 *the language.*

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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